

Chapter 8

Management of Proceedings

1 General Organisation for Court

Before going to Court:

- ensure your clerk has prepared the case list for the day;
- try to have a Police orderly present, (this is desirable although not essential);
- if there are Chamber matters, deal with them quickly so that Court can start at the appointed time.

In Court, start Court on time and rise at the expected time. This is not only for your benefit but also for counsel, the prosecutors and Court staff.

2 Order of Calling Cases

Dealing with cases in the exact order they appear on the case list, while simple, is often not the best use of time for the Court, the Police and the public. By dealing first with those cases which require little time or that keep a number of individuals tied up in Court, you will improve the efficiency of the justice system.

The following are some suggestions for calling cases. This is not a strict order you need follow but some considerations you should keep in mind while dealing with the case list.

- Find out if there are any young offender cases. If possible, try to deal with these in a way that ensures the youth's privacy, either by adjourning them to the end of the day so that all adult cases have been dealt with or excluding people from the Court.
- Deal first with those cases which you expect to take less time. For example, a speeding offence to which the accused is pleading guilty can be expected to take less time than an arson case where the accused is pleading not guilty.
- Try to call cases where the accused is in custody early, to free up Police and prison officers.
- If counsel are present for more than one matter, try to deal with those matters consecutively so they can get away.

3 Bail

The subject of bail is extremely important as it deals with the individual's constitutionally guaranteed right to liberty: *s5(1) Constitution*. For this reason, you should be familiar with the procedure for granting bail and ensure that you and the Police follow it precisely.

3.1 Bail after Arrest Without Warrant

For situations when the police may arrest a person without a warrant, see *ss18, 51 Criminal Procedure Code*.

On the arrest of a person without warrant for an offence (other than murder or treason), a police officer must, without unnecessary delay bring the person before:

- a Magistrates' Court having jurisdiction in the case;
- a Police officer of or above the rank of Sergeant; or
- the officer in charge of the nearest police station: *s20 Criminal Procedure Code*.

Arrested Person Brought Before Magistrate

If the person is brought before you, and is prepared to give bail, you may use your discretion to admit the person to bail, with or without sureties: *s106(1) Criminal Procedure Code*.

- If you allow bail, the amount must not be excessive and must be determined with regard to the circumstances of the case: *s106(2) Criminal Procedure Code*.
- Before releasing anyone on bail, you must take the recognisance of the person and his or her sureties (if any). The recognisance must direct the person to appear at the time and place mentioned in the recognisance: *s107 Criminal Procedure Code*.

Once the recognisance has been entered into, the person must be released, unless the person is being held on some other matter: *s108(1) Criminal Procedure Code*.

Arrested Person Brought Before Police

If the person is brought before a Police officer (of the rank of Sergeant or above or the officer in charge of the police station) for an offence other than murder or treason, the officer must, if it does not appear practicable to bring the person before a Magistrates' Court within 24 hours after being taken into custody, inquire into the case: *s23 Criminal Procedure Code*.

Unless it appears to the Police officer that the offence is serious, the officer must release the person upon entering into a recognisance, with or without sureties, to appear before a Magistrates' Court at a time and place named in the recognisance: *s23 Criminal Procedure Code*.

If, after due inquiry, the Police officer is of the opinion that there is insufficient evidence on which to proceed with the charge, the officer may release the person: *s23 Criminal Procedure Code*.

If the person is released, the police officer authorising the release must report the release to the nearest Magistrates' Court as soon as reasonably possible: *s24 Criminal Procedure Code*.

3.2 Bail after Arrest on Warrant

Upon arrest of a person under a warrant, the person must be brought before the Magistrates' Court that issued the warrant: *Rule 11(1) Magistrates' Courts Rules*.

Upon being brought before you, he or she must be:

- committed to prison by warrant; or
- committed to the custody of the apprehending police officer by your oral order;
- committed to other safe custody as you think fit;
- admitted to bail on such conditions as you order: *Rule 11(1) Magistrates' Courts Rules*.

You may then order the person to be brought before you at a certain time and place and, if so, you shall give notice of this time and place to the person who laid the charge: *Rule 11(1) Magistrates' Courts Rules*.

No matter which method of committal you choose, the period must not be longer than seven days: *Rule 11(1) Magistrates' Courts Rules*.

You also have the power to hear and determine the matter immediately when the arrested person appears before you, provided that:

- the person who brought the charge requests it; and
- the arrested person consents: *Rule 11(2) Magistrates' Courts Rules*.

3.3 Bail on Appeal

Occasionally, an individual convicted of an offence will appeal the conviction and you will have to deal with bail. You may:

- order that he or she be released on bail, with or without sureties; or
- deny bail: *s277(1) Criminal Procedure Code*.

If you deny bail, you must order that the execution of the sentence or order being appealed against be suspended until the determination of the appeal, if the convicted person requests: *s277(1) Criminal Procedure Code*.

3.4 Relevant Factors for Bail

There are a number of factors relevant to the grant of bail. These include:

- the protection of the right to personal liberty contained in *s5(1) Constitution*;
- whether the accused will abscond while on bail;
- the nature and circumstances of the offence charged, including the possibility of a sentence of imprisonment;
- the weight of the evidence against the accused, bearing in mind the presumption of innocence;
- the history and characteristics of the accused, including character, physical and mental condition, family ties, employment, financial resources, length of residence in community, community ties, past conduct, criminal history and record concerning appearances at Court proceedings;
- whether at the time of the current offence or arrest, the accused was subject to a sentence or awaiting trial;
- the nature and seriousness of any possible danger to any person or the community if the accused is released;
- whether the accused will interfere with prosecution witnesses and Police investigation;
- the possibility of a repetition of the offence or of further offences;
- any danger posed by the accused to the alleged victim;
- the accused's record of past convictions and any evidence indicating prior failure to appear for scheduled Court hearings;
- the length of any delay;
- the family needs of the accused.

4 Adjourments

4.1 Adjourning the Court

Every Magistrates' Court has the power to adjourn the Court from day to day or to any convenient day: *s45(1) Magistrates' Courts Ordinance*.

If sitting in a panel and one or more of the Magistrates required is not present, the sitting may be adjourned to some other time by oral or written public notice. All persons bound to be present at the adjourned sitting are then bound to be present at the time appointed by the public notice.

If none of the required Magistrates are present, any officer of the Court or authorised person may adjourn the sitting to some other time by oral or written public notice. All persons bound to be present at the adjourned sitting are then bound to be present at the time appointed by the public notice.

4.2 Adjourning a Case

Before or during the hearing of any case, you may adjourn the hearing to a certain time and place then appointed and stated in the presence and hearing of the parties or their advocates: *s189 Criminal Procedure Code*.

You may then:

- allow the accused person to go at large;
- commit the accused to prison; or
- release the accused upon a recognisance with or without sureties, conditioned on his or her reappearance at the adjourned time and place: *s189 Criminal Procedure Code*.

If the accused has been committed to prison, the adjournment must be for no longer than 15 days and in all other cases 30 days (the day after the adjournment being counted as the first day): *s189 Criminal Procedure Code*.

Adjourning a case has a useful role if used properly. It allows parties to prepare themselves to present their best case and recognises that delays do sometimes happen.

Adjourning a case should not be used merely as a delaying tactic if the parties have not been diligent in their preparation.

The most common reasons for adjourning a case are:

- the person making the charge does not appear;
- the witnesses of one of the parties do not appear;
- legal representation is being sought;
- a new issue has been raised and a party needs time to prepare a response.

Non-Appearance after adjournment

Subject to the Constitution, if the accused does not reappear at the adjourned time and place, and the offence is not a felony, you may proceed to hear the case as if the accused were present: s190(1) Criminal Procedure Code.

Subject to the Constitution, if the accused does not reappear at the adjourned time and place for a felony charge, or you decide to not hear the case in the absence of the accused, you must issue a warrant for the apprehension of the accused to be brought before the Court: s190(2) Criminal Procedure Code.

If the complainant does not reappear at the adjourned time and place, you may dismiss the case with or without costs: s190(1) Criminal Procedure Code.

5 The Mentally Ill Accused

If, at any time during the case, you have reason to believe that the accused is of unsound mind making him or her incapable of making a defence, stop the proceedings and inquire into whether the accused is of unsound mind: *s144(1) Criminal Procedure Code.*

If you are of the opinion that the accused is of unsound mind, you must postpone further proceedings in the case: *s144(2) Criminal Procedure Code.*

If an accused raises an insanity defence at trial, stop the proceedings and seek guidance on criminal responsibility from the *Penal Code* and *s146 Criminal Procedure Code*. If necessary, contact the Chief Registrar for guidance.

6 Victims

Victims of crime are usually the main prosecution witnesses. There is no specific legislation dealing with victims, but Magistrates are expected to treat them with courtesy and compassion.

In particular, you should restrain defence lawyers from humiliating victims of crime in Court. Especially vulnerable witnesses, such as the very young, very old, or disabled, are entitled to special measures when they are giving evidence. Consider allowing a family member or friend to sit with a child victim or elderly victim while giving evidence.

6.1 Consideration of Victim's Statement

Ensure that you acknowledge any statements by the victim in your sentencing remarks. A brief summary is appropriate.

Be careful about “blaming” the victim, for example, if she was drunk, unless the victim's actions are clearly relevant to mitigate the offence and you are certain about the facts.

7 Child Witnesses

For the provisions on dealing with oaths and affirmations of children appearing as witnesses, see *s3 Evidence Act*.

In order to ensure that a child witness is best able to give evidence, special steps may be taken to ensure the child is not distracted or frightened.

For example, a parent or guardian may be allowed to sit with the child while the child gives evidence, or you may ask the child to face you rather than look at the accused.

When cross-examination of the child is conducted, you are expected to be sensitive to the child's special vulnerability in deciding whether or not you should allow the questions to be asked.

8 The Accused

The accused is entitled to be present in Court during the whole of his or her trial. Although a party may be represented by counsel, he or she must still appear in Court, unless personal appearance is specifically dispensed with.

Where an accused is required to appear in Court, but fails to do so, you may:

- issue a warrant for his or her arrest; or
- adjourn the proceedings to such time and conditions as you think fit: *ss21, 31 Magistrates' Courts Act.*

9 The Unrepresented Accused

Most litigants appear in Magistrates' Court on their own. Most have little or no idea of Court procedures and rely on the Court system to assist to some extent.

If possible, all accused persons charged with an offence carrying imprisonment as a penalty should be legally represented. However, if legal representation is not available, then you should ensure the accused understands:

- the charge(s); and
- if found guilty, whether there is a probability of an imprisonment term.

To assist in the smooth running of any hearing, you should give an initial explanation outlining:

- the procedure;
- the obligation to put their case;
- the limitation of providing new evidence;
- the need to ask questions and not make statements; and
- any issues arising out of the evidence.

See the additional considerations for an unrepresented accused in Chapter 11 Defended Hearings.

10 The Prosecution

The criminal justice system relies on the adversarial model to find justice. Only by both sides vigorously putting their cases can a just outcome be reached. With such considerations, a high level of professionalism is expected from Police prosecutors.

In order to ensure the fairness and effectiveness of the prosecution, prosecutors should strive to co-operate with other Police force members, the Courts, the legal profession and other government agencies or institutions.

You should expect the prosecutor to be prepared when he or she appears before you in Court. If the accused or a witness does not show up, the prosecutor should be prepared to prove service.

Asking for a new summons instead of proving service the first time wastes Court and Police time and must be strongly discouraged, simply reading the facts from the charge sheet is not a vigorous prosecution

The prosecutor should know the elements of the offence and have evidence to prove each element. The facts should be complete enough so you do not have to ask too many questions.

If you must ask a lot of questions to establish the prosecution's case, it could appear you are conducting the case for the prosecution and that you may be biased.

The prosecutor should have a basic understanding of Court procedure and be prepared to deal with issues that commonly arise. The prosecutor has a duty to faithfully represent the Republic of Kiribati and should only give a strong prosecution on the facts.

The prosecutor should not try to help the accused by making the offence appear more minor than it was, nor should they embellish the facts to make the offence sound worse than it was.

At sentencing, the prosecutor should have previous convictions ready and be ready to prove them if denied by the accused, as well as any reports or statements of aggravating or mitigating factors:

11 Misbehaviour in Court

11.1 Contempt of Court

Occasionally, it may consider it necessary to find a witness, accused or member of the public in contempt of Court.

As a Magistrate, you have the same powers to deal with contempt as the High Court: *s6 Magistrates' Court Ordinance*.

In addition to your power to deal with contempt in the same manner as the High Court, there are also a number of offences relating to the administration of justice under *Parts XI and XII Penal Code*.

Contempt is established when any person:

- by words or actions, shows disrespect for the proceedings of the Court or to any Magistrate within the premises or nearby the place of Court;
- fails, without good cause, to appear on the date and time specified in a Court summons, the proof of showing good cause is on the person failing to appear;
- refuses to be sworn or to make an affirmation when called upon to give evidence;
- refuses without lawful excuse to answer a question or produce a document in his or her power to produce, once they have been sworn or affirmed;
- if they are in attendance as a witness, remains in the room after all witnesses have been ordered to leave;
- causes an obstruction or disturbance during a judicial proceeding;
- makes use of any speech or writing misrepresenting any pending judicial proceeding or capable of prejudicing any person for or against any parties to such proceeding or calculated to lower the authority of any person before whom such proceeding is being taken; or
- commits any act of intentional disrespect to any judicial proceeding or to any Magistrate: *s115(1)(a), (b), (c), (d), (e), (f), (g) and (l) Penal Code*.

All the above acts of contempt are punishable by one months imprisonment if proved by a prosecutor at trial. If, however, the offence is committed in view of the Court, you may order the offender to be detained in custody, and at any time before the rising of the Court that day, you may sentence the offender to a fine of \$40 or in default of payment, imprisonment for one month: *s115(1)(2) Penal Code*.

Less common instances of contempt occur when any person:

- publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private;
- attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he or she has given evidence;
- dismisses an employee or servant for giving evidence on behalf of a party to a judicial proceeding; or
- wrongfully retakes possession of land from any person who has recently obtained possession by Court order: *s115 (h), (i), (j) and (k) Penal Code*.

Unlike the earlier types of contempt, you cannot deal with these immediately in Court if you witness them. These types of contempt are punishable by 3 months imprisonment only after prosecution: *s115(1) Penal Code*.

11.2 Refractory Witness

A refractory witness is any person who has been verbally called upon by the Court to give evidence, and without sufficient excuse:

- refuses to be sworn;
- having been sworn, refuses to answer any lawful question;
- refuses or neglects to produce any document or thing required to be produced; or
- refuses to sign his or her deposition: *ss135(1) Criminal Procedure Code*.

When dealing with a refractory witness you may adjourn the case for up to eight days and may commit the witness to prison unless he or she sooner consents to do what is required: *s135(1) Criminal Procedure Code*.

If the refractory witness is brought before the Court at the later time and again refuses to do what is required, you may adjourn the case again and commit the witness for another eight days and again from time to time until the person consents to do what is required of him or her: *s135(2) Criminal Procedure Code*.

The power to punish a refractory witness is in addition to any other punishment or proceeding for refusing or neglecting to do what is required of him or her: *s135(3) Criminal Procedure Code*.

Even without the evidence of the refractory witness, if possible you may still dispose of the case based on other sufficient evidence: *s135(3) Criminal Procedure Code*.

12 Particular Orders

In addition to any sentence you may impose as punishment for an offence, there are a number of other orders that may be useful.

12.1 Costs

Costs Against the Accused

If the charge is prosecuted by a private individual, in addition to any other penalty, you may order the offender to pay the prosecutor reasonable costs, up to a maximum of \$50: *s152(1) Criminal Procedure Code*.

Costs Against the Prosecution

In cases of frivolous or vexatious charges against the accused which you have dismissed, you may order the complainant to pay to the accused a reasonable sum as compensation for the trouble and expense to which he or she has been put in addition to his or her costs: *s154 Criminal Procedure Code*.

In certain cases where you have dismissed the charge, you may also order the Republic to pay a reasonable sum to the accused for trouble and expense. See *s154(2) Criminal Procedure Code*.

12.2 Restoration of Property

Property Found on Accused

Where an accused is apprehended and is found with any property, you may order that:

- the property or any part be restored to the person who appears to be entitled to it (including the accused himself or herself); or
- the property or any part be applied to the payment of any fine, costs or compensation ordered to be paid by the accused: *s155 Criminal Procedure Code*.

12.3 Security for Keeping the Peace

Complaint Dismissed

Even if the complaint is dismissed you may still:

- bind both the complainant and the accused, with or without sureties, to keep the peace and be of good behaviour for a period not exceeding one year; and
- order that any person so bound be imprisoned in default of compliance for three months or until such time as he or she complies: *s35(2) Penal Code*.

You may not bind an accused under this section who has been sentenced to more than six months imprisonment, nor may you bind a complainant unless he or she has been given an opportunity to address the Court as to why he or she should not be bound over: *s35(2) Penal Code*.

13 Search Warrants

Although not strictly part of the process of hearing a case, search warrants are a necessary part of the investigation of crime. Search warrants allow the Police to gather evidence the trial. It is important that you are aware of the procedure to follow when a search warrant is sought.

Note that the *Constitution* recognises an individual's right to privacy of home and other property: *s9(1) Constitution*.

The right to privacy is subject to laws permitting search.. The exceptions most applicable to criminal law are those laws which are:

- in the interests of defence, public safety, public order or public morality;
- for the purposes of protecting the rights and freedoms of other persons; or
- for the purposes of preventing or detecting criminal offences: *ss9(2)(a),(b) and (e) Constitution*.

The most common applications for search involve allegations that an individual has another person's goods on his or her property.

13.1 Granting the Search Warrant

You may issue a search warrant when it is proved to you on oath that anything in respect of an offence necessary to the conduct of the investigation can, in fact or on reasonable suspicion, be found in any:

- building;
- ship;
- vehicle;
- box;
- receptacle; or
- place: *s101 Magistrates' Courts Ordinance*.

If anything searched for or any other thing which is reasonably suspected to have been stolen or unlawfully obtained is found, the Police officer conducting the search must seize it and bring it before the Court: *s101 Magistrates' Courts Ordinance*.

Procedure

To apply for a search warrant, the Police officer must swear or affirm the information which provides the grounds for the search warrant. See *Form 36 Magistrates' Courts Ordinance*.

This information should be sworn before you personally by the requesting Police officer.

If you are satisfied on oath that reasonable grounds exist for the search, you should give the authorisation for the search through See *Form 37 Magistrates' Courts Ordinance*.

A person who believes that his or her goods may be found on another person's property should not apply directly to you for a search warrant. He or she should take their complaint to the Police, who will then apply to you for a search warrant if they deem it necessary.

14 Case Management

Maintaining an efficient Court must not interfere with the substantive decisions you make but, where possible, avoiding delay and dealing quickly with cases will improve justice.

Goals

The goals of case management are to:

- ensure the just treatment of all litigants by the Court;
- promote the prompt and economic disposal of cases;
- improve the quality of the litigation process;
- maintain public confidence in the Court; and
- use efficiently the available judicial, legal and administrative resources.

The following points should be kept in mind to improve case-flow management:

- unnecessary delay should be eliminated;
- it is the responsibility of the Court to supervise the progress of each case;
- the Court has a responsibility to ensure litigants and lawyers are aware of their obligations;
- the system should be orderly, reliable and predictable;
- early settlement of disputes is a major aim; and
- procedures should be as simple and understandable as possible.